

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA	)	NO. 4:16-CR-481-1
	)	
	)	
VS.	)	Houston, Texas
	)	2:21 P.M.
	)	
JAMES MICHAEL CURTIS JOHNSON	)	February 19, 2019

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## SENTENCING

BEFORE THE HONORABLE LYNN N. HUGHES

UNITED STATES DISTRICT JUDGE

VOLUME 1 OF 1

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APPEARANCES:

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1 COURT REPORTER:

2 Ms. Kathleen K. Miller, CSR, RMR, CRR  
3 515 Rusk, Room 8004  
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5 Proceedings recorded by mechanical stenography.  
6 Transcript produced by computer-assisted transcription.  
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## P R O C E E D I N G S

February 19, 2019

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THE COURT: Thank you. Please be seated.

02:21:35

I apologize for the delay. It could not  
be helped, at least not by me.

United States of America vs. Michael  
Curtis Johnson.

02:21:53

MR. CHU: Good afternoon, Your Honor, Michael  
Chu for the United States.

MR. TRAN: Good morning. Judge, Son Tran and  
Windi Pastorini for Defendant Johnson.

THE COURT: So are you his lawyer?

02:22:15

MS. PASTORINI: No, sir. This will be his  
first experience in appearing before this Honorable Court,  
and I -- we would both like to say a few words on behalf of  
Mr. Johnson, if that's okay with you.

THE COURT: Sure.

MS. PASTORINI: Thank you, Your Honor.

02:22:26

THE COURT: You're always welcome.

MS. PASTORINI: Thank you.

(Defendant sworn by the Court.)

THE WITNESS: Yes, sir.

02:22:40

THE COURT: All right. Please keep your voice  
up. And, Mr. Johnson, have you read this very long

1 presentence report?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you talked to Ms. Pastorini  
4 about that?

02:23:07

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has she answered all of your  
7 questions?

8 THE DEFENDANT: Yes, sir.

02:23:17

9 THE COURT: Mr. Chu, does the government have a  
10 recommendation?

11 MR. CHU: Your Honor, we ask for the mandatory  
12 minimum of 12 years.

13 THE COURT: And other than that is easy to  
14 count, is there a particular reason for it?

02:23:30

15 MR. CHU: Your Honor, we believe that is  
16 sufficient under the guidelines as well to just satisfy the  
17 debt Mr. Johnson owes to society.

18 THE COURT: All right. Ms. Pastorini, do you  
19 want to do it or do you want Mr. Tran?

02:23:55

20 MS. PASTORINI: I am happy to say a few words.  
21 Or why don't you go ahead and go first.

22 MR. TRAN: All right, Judge.

23 THE COURT: Do you have a recommendation?

02:24:05

24 MR. TRAN: Judge, we would ask that you seek --  
25 find a way to maybe possibly grant a variance.

1 THE COURT: Speak up.

2 MR. TRAN: That you possibly find a way to  
3 grant a variance to see if we could join the two mandatory  
4 minimums together at any way possible. I am aware that  
02:24:16 5 these are two mandatory minimum cases. I just have several  
6 arguments that I think that the Court should be allowed to  
7 consider.

8 THE COURT: Okay. Well, one of them was that  
9 he was -- is this the one where he was one day within  
02:24:33 10 the --

11 MR. TRAN: No, Judge. There are other  
12 arguments in addition to that. For instance, first,  
13 this -- Mr. Johnson, he accepted responsibility.

14 THE COURT: And it doesn't matter.

02:24:45 15 MR. TRAN: You're absolutely right, Judge. But  
16 it just seems unfair that someone who would put the  
17 government through the burden of preparing for trial, an  
18 expensive trial, would get basically the same amount of  
19 time as Mr. Johnson, who did not do that.

02:25:00 20 Second --

21 THE COURT: Mr. Chu doesn't prepare. He's so  
22 smart. He does -- it's assigned to him and he announces  
23 ready for trial.

24 MR. TRAN: That may be true.

02:25:10 25 Second, on the issue of the 924(c), I

1 believe that the government -- we may be in agreement that  
2 they probably see this as a self-defense case. The 924(c)  
3 count, however, makes no distinction between somebody going  
4 and trying to commit a robbery and buying a weapon versus  
5 somebody who was basically defending themselves from a  
6 robbery. And the 924(c) count just -- there is no credit  
7 given for any of those cases.

8 THE COURT: And what sort of robbery was going  
9 on at the time he had to defend himself?

10 MR. TRAN: Judge, Mr. Johnson was selling two  
11 pounds of marijuana. He did bring --

12 THE COURT: Stop it right there.

13 MR. TRAN: Okay.

14 THE COURT: He had the gun because people in  
15 the same business that he is just sometimes can't be  
16 trusted.

17 MR. TRAN: You're absolutely right, Judge.

18 THE COURT: And so he had a gun to perpetuate  
19 his drug deal, whichever way it was going. It doesn't make  
20 any difference. That is not self-defense. That's  
21 defending your wrong against another wrongdoer. It seems  
22 like it's a tie.

23 MR. TRAN: Yes, Judge, and I am not saying he  
24 was not in the wrong, but there should be a distinction  
25 between somebody who tries to rob someone versus someone

1 who never made that step to try to rob anyone, who was  
2 merely just --

3 THE COURT: Other than his customers of their  
4 well-being, and sanity, and money.

02:26:50

5 MR. TRAN: Other than those, Judge.

6 THE COURT: Yes.

02:27:07

7 MR. TRAN: Last, as far as the acceptance, kind  
8 of going back to that, there's no question that Mr. Johnson  
9 was the first to take a plea. I know it's very hard to  
10 distinguish or to really track or understand whether or not  
11 his first plea -- or his plea possibly influenced the  
12 others in the case to plea. I know Mr. Johnson doesn't  
13 believe so.

02:27:21

14 We believe that it may have had an effect.  
15 To what extent, no one can know.

16 THE COURT: I don't remember the role of the  
17 others.

18 MR. TRAN: The other people were  
19 co-conspirators in the --

02:27:31

20 THE COURT: I know. They could be chopping up  
21 bodies as a co-conspirator or just running errands and  
22 buying pizza.

23 MR. TRAN: Okay. The --

24 THE COURT: Different kinds of co-conspirators.

02:27:41

25 MR. TRAN: I'm sorry, Judge. There were

1 co-conspirators -- co-conspirators in the aggravated  
2 identity theft case.

3 THE COURT: Some of them were like actors.

4 MR. TRAN: Actors, yes, Judge. But, in that  
02:27:54 5 aggravated -- aggravated identity theft case, not the  
6 discharging of the firearm case.

7 And then last, our last argument, while we  
8 did look at the first step backs, nothing falls squarely on  
9 it. We believe that there is a changing attitude towards  
02:28:17 10 sentencing reform and mandatory minimums allowing the trial  
11 court more discretion, and we believe that you should take  
12 that possibly into consideration as well.

13 THE COURT: Mr. Tran, I was a judge before we  
14 had sentencing guidelines. A presentence report was six to  
02:28:43 15 eight pages, and there were two charts of distribution  
16 diagrams of sentences for the particular crime in this  
17 district and nationwide.

18 Texas and Arizona and southern California  
19 have more bad immigration than drug cases coming across the  
02:29:06 20 border. Now, they may have an immigration problem in  
21 Kansas, but it's -- theirs really tend to be lighter, so  
22 you can compare how you fit with the nation, just the  
23 national average.

24 That was about it. And there was no math.  
02:29:30 25 You had a statutory range, and the facts of the crime, and



1 you made a decision. That's what we ought to go back to  
2 doing.

02:29:52

3 But the problem with sweet Congress is  
4 when they make a mistake, the supporters abandon it, but  
5 there is never a constituency put together just to undo it.  
6 And so things that have made no sense for 20 years, they  
7 would probably agree, but they wouldn't take the time  
8 because there are other things to do.

02:30:19

9 So it's sort of a bureaucratic version of  
10 the old political sayings: Friends may come, and friends  
11 may go, but enemies accumulate. So, I think that's the way  
12 it is with laws.

02:30:43

13 I would be happy for the sake of  
14 defendants, the people who have to support them, and who  
15 are injured by them, to have a simpler, reasonable approach  
16 to this.

02:31:16

17 But Mr. Johnson's report is still laying  
18 right here. It's 31 pages. And then there are two or  
19 three addenda, and other stuff, that's -- it's somewhere in  
20 the low 40s. It is completely unnecessary to do a fair  
21 appraisal of Mr. Johnson.

02:31:55

22 And the number of appeals almost -- there  
23 were very few criminal appeals relative to the number of  
24 cases, and after the sentencing guidelines, the circuits  
25 have huge banks of staff attorneys who do nothing but

1 guideline calculation appeals.

2                   The statute does say they're guidelines,  
3 but the appellate courts decided, no, they're not  
4 guidelines, that they're almost conclusions. That that's  
02:32:18 5 the way it is going to be.

6                   What else?

7                   MR. TRAN: That's it, Judge.

8                   THE COURT: Now, do you want to talk now or  
9 later on when you talk about generalities rather than  
02:32:37 10 calculations?

11                   MS. PASTORINI: Judge, I will do whatever  
12 pleases this Honorable Court, but I just -- you know, I  
13 just don't -- I cannot understand, for the life of me, just  
14 like you were saying, why you have got a mandatory minimum  
02:32:50 15 of ten, and a mandatory minimum of two. I just don't  
16 understand why they can't run together.

17                   I mean, you give them the mandatory  
18 minimum, that you -- I do understand that that's what the  
19 law is, that that's why you can't, but I just believe  
02:33:04 20 that's not what the law ought to be. There is no more  
21 powerful person on the planet than a Federal District  
22 Judge.

23                   THE COURT: Yes, there is.

24                   MS. PASTORINI: Judge, they --

02:33:14 25                   THE COURT: The prosecutor.

1 MS. PASTORINI: Really? I would --

2 THE COURT: A District Attorney, or United  
3 States Attorney can destroy lives by simply calling a press  
4 conference and announcing an investigation about which they  
02:33:27 5 don't know anything, or they can do like those fellows in  
6 New York. Spitzer, I think was his name, announcing an  
7 investigation into some giant company, and then the lawyers  
8 for the company, well, you know, this doesn't seem to make  
9 any sense, could we work this out? Give the State of New  
02:33:49 10 York \$10 million. There is a name for that. It's called  
11 extortion. But your defense to a prosecutor is very  
12 minimal.

13 MS. PASTORINI: Judge, I would also point out  
14 that -- I mean, you -- a Federal Judge can subpoena the  
02:34:09 15 president of the United States, as in the Richard Nixon  
16 case. There is un -- it is unlimited power, but they tie  
17 your hands, and they say we are not going to give you the  
18 power to go below ten on the one case, and two on the  
19 other.

02:34:22 20 I just think that that's -- to give  
21 somebody such power and trust with such knowledge and  
22 integrity, to go behind and say, but we're not going to  
23 give you any latitude in a case like this, I just -- I  
24 mean, it's bad enough that it is a ten-year mandatory  
02:34:37 25 minimum. It's bad enough it's a two-year. But to not even

1 let them run concurrently, to me, is just outrageous.

2                   It should be a decision of this Honorable  
3 Court and not of -- not of some guideline, or some statute.  
4 It should be discretion. It should be your -- you know,  
02:34:56 5 should be yours, and not -- not -- not have your hands tied  
6 to these things.

7                   And that's -- you know, I could go on for  
8 a while but I think you got my point, and I know that. I  
9 don't want to waste the Court's time. But, thank you,  
02:35:09 10 Judge, for hearing me.

11                   THE COURT: There are occasions when I am  
12 instructing the jury on the law, I do stop and remind them  
13 that I didn't write this stuff. I am obliged to apply it.

14                   These are not the laws I might write. And  
02:35:33 15 -- but, that's the way the system works. When we get a  
16 law, we obey it. Well, some of us do.

17                   I had ruled you needed a search warrant  
18 for cell tower stuff for two years before the Supreme Court  
19 agreed with me. And there are some things seem obvious.

02:36:01 20                   MS. PASTORINI: Judge, I just hope that one  
21 day -- one day -- they're starting to soften these harsh,  
22 harsh sentencing rules, and I just hope that just like the  
23 first step back that something comes out that at some point  
24 will give Mr. Johnson some relief from two mandatory  
02:36:16 25 minimums, when he did everything in his power to help the

1 government but they couldn't go anywhere with it. They --  
2 unless it lead in their little guidelines to, you know, to  
3 somebody else getting charged, or some evidence to tell  
4 them something they didn't know, and half the time you  
02:36:34 5 wonder, did they really know all this or did they just say  
6 they knew all this? And you never know.

7 But the bottom line is, even though he did  
8 everything he could to try to help them in every way  
9 possible, you know, they just said it is not good enough.

02:36:46 10 Not yet. Not good enough. Maybe you can do something  
11 better somewhere down the line. But anyway...

12 THE COURT: Are we talking about the downward  
13 departure?

14 MS. PASTORINI: Yes, sir.

02:36:58 15 THE COURT: I'm not sure Mr. Chu is prepared to  
16 defend that at the moment, but there would be a point at  
17 which the government's declination to give credit for it  
18 would be irrational, and I would accept that. But, I  
19 certainly wouldn't expect it from Mr. Chu, or do I have any  
02:37:29 20 hard data from anybody, always, to evaluate that.

21 MS. PASTORINI: I understand. Thank you, Your  
22 Honor.

23 THE COURT: Mr. Chu, anything else before I  
24 talk to Mr. Johnson?

02:37:46 25 MR. CHU: No, Your Honor. Thank you.

1 THE COURT: Mr. Johnson --

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: -- anything you want to tell me?

4 THE DEFENDANT: First off, I want to -- I want

02:37:59

5 to apologize to my family for putting them through this,  
6 and I also want to thank them for being there to support  
7 me. And I want to thank you for giving me this moment to  
8 speak right now.

9 THE COURT: Wait, Mr. Johnson. It's some of

02:38:16

10 those people out there?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Turn around and face them. Now  
13 tell them you're sorry.

14 THE DEFENDANT: I want to thank you guys for

02:38:25

15 being here to support me, and I want to apologize to y'all,  
16 for putting you through this.

17 THE COURT: I want y'all to love him, but don't  
18 make excuses for him. He knew what he was doing. He did  
19 it. So help him, but helping him isn't pretending he

02:38:49

20 didn't do serious wrong.

21 You might add one more arrow to your

22 quiver of opposition to excessive sentences, and that is  
23 every prison guard we hire is a school teacher we can't

24 afford. And, somehow, I would rather spend more money on

02:39:35

25 them at 6 than way bunch of money on them at 26. It would

1 just be so simple if Congress would send me a postcard and  
2 asked me what I wanted them to do.

3 Check on that, Mr. Chu. I think there is  
4 something wrong with the mails.

02:39:57

5 MR. CHU: Yes, sir.

6 THE COURT: Mr. Johnson --

7 THE DEFENDANT: Yes, sir.

8 THE COURT: -- I sentence you to 120 months on  
9 Count 1S, and followed by 24 months on Count 2S, to be

02:40:23

10 served consecutive. No probation. Three years of  
11 supervised release on 1, and one year on 2, for a total of  
12 3, because they will be concurrent. No fine. \$294,152.32  
13 in restitution. That money is payable \$139,624 to the  
14 Internal Revenue Service; \$88,776.84 to Great Southern  
15 Bank; \$15,000 to Compass Bank; \$50,751.48 to the First  
16 National Bank of Omaha. And there are two \$100  
17 assessments.

02:41:50

18 Mr. Chu?

19 MR. CHU: Move to remit, Your Honor.

02:42:21

20 THE COURT: Granted. Thank you.

21 Mr. Johnson, during your supervised  
22 release -- do you know how that works? It's like  
23 probation, after you do the time. Is this your first  
24 federal?

02:42:52

25 THE DEFENDANT: Yes, sir.

1 THE COURT: It's sort of like if you did six  
2 years, and then they paroled you for the rest, only we  
3 don't do that. We make you serve the full-time and then  
4 you get a little bit. So for three years after you're  
02:43:08 5 released, you will still be under my supervision.

6 And the terms of that are you won't commit  
7 another crime, and that doesn't mean a traffic ticket, but  
8 don't get one of those either because that's dangerous.  
9 You will give hair, DNA, skin, blood, urine, any sample  
02:43:37 10 that the probation officer orders.

11 Then, obviously, there's a federal law  
12 that says it's illegal for you to possess, control a  
13 firearm, parts of a firearm, ammunition, or a bomb. Got  
14 that?

02:43:57 15 THE DEFENDANT: Yes, sir.

16 THE COURT: That's -- that is repetitive, and  
17 it is also illegal in Texas, and I suspect 49 other states.

18 You will attend, cooperate  
19 enthusiastically and politely with any program for drug  
02:44:21 20 abuse, or anger management, or anything else that the  
21 probation officer decides you need. Some of that should be  
22 available in the prison. No drugs without a prescription,  
23 no alcohol, no smoking.

24 Do you work out?

02:44:54 25 THE DEFENDANT: Yes, sir.



1 THE COURT: Do you take those pills to make you  
2 real macho?

3 THE DEFENDANT: No, sir.

4 THE COURT: Well, you can't do it when you get  
02:45:02 5 out either. You can't open any bank accounts, charge  
6 cards, borrow money, any of that stuff without, as they say  
7 on television, the prior written consent of the probation  
8 officer.

9 Do you have any questions? You will get a  
02:45:25 10 copy of it that goes on for pages. Do you have any  
11 questions about that?

12 THE DEFENDANT: No, sir.

13 PROBATION OFFICER: Your Honor, payment plan  
14 for the restitution?

02:45:36 15 THE COURT: You're not going to pay it all at  
16 once, are you?

17 THE DEFENDANT: No, sir.

18 THE COURT: \$200 a month starting the third  
19 month that you're -- after you're released.

02:46:02 20 You're fixing to go to prison for 12  
21 years. If you're thinking there is just no good side to  
22 that -- and you are almost right -- there are several  
23 things you can do in prison.

24 Mainly, at the bare minimum you can read.  
02:46:24 25 You can keep yourself healthy. You can take classes and

1 stuff. But don't take classes that you think the  
2 certificate will impress me because you got one in foot  
3 rubs or something. Take classes that will help you, make  
4 you a better, stronger person when you get out, because you  
5 put several impediments in your way. You built some road  
6 blocks around yourself between you and a job and all kinds  
7 of things.

8 So the better equipped you are, especially  
9 showing that you did it under the worst possible  
10 circumstances for going to school, that will be to your  
11 credit.

12 You get into prison because you made a bad  
13 choice. So let's start making good choices, so we can stay  
14 out of the dump. Hear me?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Any questions about anything?

17 THE DEFENDANT: No, sir.

18 THE COURT: Mr. Chu, anything else from the  
19 government?

20 MR. CHU: No, Your Honor. Thank you.

21 THE COURT: Ma'am?

22 MS. PASTORINI: No, Your Honor.

23 MR. TRAN: Nothing further, Judge.

24 THE COURT: You are not going to survive  
25 appearing before some judges if you whisper to them. Speak

1 up.

2 MR. TRAN: Nothing further, Judge.

3 THE COURT: It is not that hard.

4 I have actually been a Judge for 40 years  
02:47:58 5 this year, if you add my state and federal service  
6 together. I have never killed a lawyer yet, so you can  
7 relax. Some walking wounded maybe but never actually  
8 killed one.

9 And if I weren't a little bit scary, you  
02:48:20 10 would want to come back too much. All right.

11 THE CASE MANAGER: Right to appeal.

12 THE COURT: You have the right to appeal. You  
13 have a right to appeal with a lawyer appointed for you, and  
14 to appeal without paying costs. There is a statement about  
02:48:40 15 that.

16 Please read it, if you understand it.

17 All right. Mr. Johnson, anything?

18 MR. TRAN: No, sir.

19 THE COURT: Good luck to you, Mr. Johnson.

02:49:19 20 THE DEFENDANT: Thank you, Your Honor.

21 MS. PASTORINI: It was a pleasure as always.

22 Thank you.

23 (Concluded at 2:49 p.m.)

24

25

## COURT REPORTER'S CERTIFICATE

I, Kathleen K. Miller, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Aug. 20, 2020

/s/ Kathleen K. Miller

Kathleen K. Miller, RPR, RMR, CRR

02:49:24